IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 381

LOCAL UNION No. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO,
Petitioner,

vs.

NEEDHAM PACKING COMPANY, D/B/A SIOUX CITY DRESSED BEEF, A CORPORATION,
Respondent.

ON PETITION FOR REHEARING OF AN ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

United Steelworkers of America, AFL-CIO (hereinafter "USWA") and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL-CIO (hereinafter "UAW") respectfully move for leave to file a brief as *amici curiae*. The consent of counsel for the petitioner has been obtained. The consent of counsel for the respondent was requested but refused. The brief which USWA and UAW wish to file is tendered herein.

USWA and UAW are the two largest affiliates of the AFL-CIO. Together, they represent more than two-and-one half million employees. More important than mere size however, insofar as this case is concerned, USWA and UAW are two unions deeply committed to arbitration as the means for resolving disputes arising under collective bargaining agreements. Each union processes literally thousands of grievances each year to arbitration, and each is involved in dozens of lawsuits each year under Section 301 of the LMRA, 29 U.S.C. §185, regarding arbitrability

and the scope of arbitrators' authority. Indeed, it was because of the importance of arbitration to its day-to-day activities that USWA brought to this Court the three cases in which the federal labor policy governing arbitration was enunciated. *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

The decision below constitutes a flagrant departure from the standards enunciated in the above-cited "trilogy". Because of the unusual publicity within the labor bar which will attend the decision below, and the consequent encouragement of efforts to resist arbitration, the denial of certiorari may undermine what has heretofore been a faithful adherence to those standards.

We are advised that petitioner will file a petition for rehearing of the denial of certiorari. Petitioner will naturally concentrate upon the particular question presented by the facts of this case. We wish, however, to set before the Court the broader implications of the decision below to the entire arbitral process, as we view them from the standpoint of our substantial nationwide commitment to that process.

Respectfully submitted,

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BRIEF FOR UNITED STEELWORKERS OF AMERICA, AFL-CIO AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AFL-CIO, AS AMICI CURIAE

INTEREST OF AMICI CURIAE

This joint brief *amici curiae* is tendered for filing by United Steelworkers of America, AFL-CIO (hereinafter "USWA") and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL-CIO (hereinafter "UAW"), contingent upon the Court's granting the Motion for Leave to File Brief as Amici Curiae.

USWA and UAW are the two largest affiliates of the

AFL-CIO, together representing more than two-and-one-half million employees. They are also unions which are deeply committed to arbitration as the means for resolving disputes arising under collective bargaining agreements.

This Court's decisions enunciating the federal labor policy governing arbitration, under Section 301 of the LMRA, 29 U.S.C. §185, have accorded a broad scope to the arbitral process. The decision below is a flagrant departure from the standards established by this Court. For several reasons, discussed more fully herein, the decision below is likely to attain considerable notoriety and, unless reversed, may begin an erosion among lower courts of the standards so carefully elaborated by this Court. Because of their substantial nationwide commitments to the arbitral process, USWA and UAW view with alarm any development which might lead to such erosion.

Therefore, they file this brief to urge that the Court grant certiorari to review the decision below.

ARGUMENT

It can hardly be disputed that the decision below is a flagrant departure from the principles enunciated by this Court in its arbitration "trilogy", *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). The court below did precisely what this Court said courts are not to do: it picked the arbitrator's award apart, word by word and page by page, ultimately concluding that the award was somehow wrong and should not be enforced. Although the court below purports to be following the "trilogy", reciting that its decision is merely an application of the principles set forth therein, a reading of the whole opinion makes clear that this is merely lip service camouflaging a complete violation of those principles.

The issue being arbitrated was whether the Company's discharge of 180 employees for engaging in a work stoppage was a breach of its contractual obligation not to discharge without "just cause". If ever there was an issue which is "grist in the mills of the arbitrators", *Warrior & Gulf, supra,* 363 U.S. at 584, it is the propriety of discharges allegedly not for just cause. BNA's index of *published* arbitrators' decisions over a five year period dealing with that issue—only a small fraction of the total, for most arbitration decisions are not published—covers 170 pages, and lists nearly one thousand decisions.[1]

The arbitrator in the instant case wrote a 97 page opinion explaining why he had concluded that the discharges were not for just cause. His award was entitled to affirmance under the "trilogy". The contrary conclusion reached by the court below, and the reasons given for its conclusion, simply will not gibe with this Court's arbitration decisions.

Rule 19(1)(a) lists, as one of the reasons considered appropriate for certiorari:

> "Where a state court has decided a federal question of substance . . . in a way probably not in accord with applicable decisions of this court".

We recognize, of course, that this Court's exercise of its "policing" authority over state courts is discretionary, and that many cases involving arbitrability are to some extent *sui generis,* i.e., they involve the application of legal principles to particular contractual language and to a particular grievance. Nevertheless, we believe the instant case involves so egregious a departure from the trilogy's standards as to warrant the attention of this Court, just as did *Piano & Musical Instrument Workers Union* v. *W.W. Kimball Co.,* 333 F.2d 761, *reversed per curiam* 379 U.S. 357 (1964) (citing, *inter alia, American Mfg. Co., supra).*

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[1] BNA, Labor Arbitration Cumulative Digest and Index, covering Volumes 31-40.

Our concern is not over the fate of this particular petitioner. Rather, we fear that the decision below, if not reversed, may constitute a beacon to other employers to resist arbitration, in the hope that they, too, will be the beneficiaries of "wrong" decisions which will not be reviewed by this Court. Our fear is magnified for two reasons:

1. The decision below is not just a run-of-the-mill decision on arbitrability. It is a decision in a case which has attracted nationwide attention within the labor bar, because the arbitration originally was ordered pursuant to a decision of this Court, *Local Union No. 721, United Packinghouse Workers* v. *Needham Packing Co.*, 376 U.S. 247 (1964).

2. A substantial number of members of the labor bar (albeit, happily, a minority) are totally unsympathetic to the principles enunciated by this Court in the "trilogy". They have been seeking for years to obtain condemnation of the decisions by the American Bar Association and an endorsement of legislation reversing the trilogy.[2]

While the opponents of the "trilogy" have been unable to launch a serious legislative attack on the decisions, they will undoubtedly find the decision below, if undisturbed by this Court, a more convenient vehicle to accomplish the same result. We fully expect an upsurge of refusals to arbitrate, and of attacks on arbitrators' awards, in which the lower courts will be urged to follow the lead of the Iowa Supreme Court. For all the emphasis which this Court has placed on the non-significance of its denials of certiorari, Stern and Gressman, *Supreme Court Practice* 149-53 (2d Ed. 1954), the fact that certiorari was denied in this case will be advanced as evidence that further incursions upon the "tril-

[2] See, e.g., ABA, Section of Labor Relations Law-1963 Proceedings-Part II, pages 196-225: Report of the "Special *Warrior & Gulf* Committee."

ogy", like that of the court below, will be tolerated by this Court.

In summary, the decision below will not go unnoticed by the compact and informed labor bar, nor will this Court's denial of certiorari. The inevitable result will be a reopening of questions, and a resurgence of efforts, which had until now been put at rest by the "trilogy". We believe, in short, that this case is precisely one which this Court should review as an exercise of its "policing" authority over state court decisions which are "probably not in accord with applicable decisions of this court". Rule 19(a)(1).

Respectfully submitted,

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